

000101

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

52

July 14, 2008

10/21

SUBJECT: NextG Agreement of the Conversion of Overhead Facilities to Underground

GENERAL CONTRACT INFORMATION

Recommended Contractor: NextG Networks of California, Inc.
Amount of this Action: \$500,000
Funding Source: City

SUBCONTRACTOR PARTICIPATION

There is no subcontractor activity associated with this action at this time.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

NextG Networks of California, Inc submitted a Workforce Report for their San Diego office dated July 2, 2008. The Workforce analysis reflects under representation in the following areas:

Hispanic	Professional,
Asian	Professional, A&E, Science, Computer, Technical
Filipino	Professional, A&E, Science, Computer, Technical
Female	Professional, A&E, Science, Computer, Technical, Administrative Support, Services

NextG Networks of California, Inc. has been requested to submit an Equal Opportunity Plan to address strategies to remedy the deficiencies in their workforce.

ADDITIONAL COMMENTSBeryl Rayford

EOC Program Manager by:AMJ

000103

File: Admin WOFO 2000

Date WOFO Submitted: 7/2/2008

Input by: AMJ

Goals reflect statistical labor force

availability for the following:

2000 CLFA

Santa Clara

City of San Diego/Equal Opportunity Contracting

WORK FORCE ANALYSIS REPORT

FOR

Company: NextG Networks of California, Inc.

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
CLFA Goals	M	F		M	F		M	F		M	F		M	F		M	F		M	F	
Mgmt & Financial	2.0%	0	0	9.5%	0	0	19.5%	1	1	0.2%	0	0	19.5%	0	0	4	1		1	0	
Professional	3.1%	0	0	10.3%	0	0	20.1%	0	1	0.4%	0	0	20.1%	2	0	11	6		3	0	
A&E, Science, Computer	1.6%	2	0	4.6%	2	0	43.8%	1	0	0.2%	0	0	43.8%	0	0	6	0		7	0	
Technical	3.5%	2	0	12.7%	2	0	40.7%	0	0	0.1%	0	0	40.7%	3	0	4	0		1	0	
Sales	2.8%	0	0	20.1%	1	0	19.0%	0	0	0.4%	0	0	19.0%	0	0	1	0		0	0	
Administrative Support	3.7%	0	0	24.0%	4	0	18.9%	1	1	0.4%	0	0	18.9%	2	0	2	0		0	0	
Services	3.3%	0	0	43.1%	0	0	19.3%	0	0	0.6%	0	0	19.3%	0	0	2	0		0	0	
Crafts	2.7%	0	0	26.7%	0	0	22.5%	0	0	0.3%	0	0	22.5%	0	0	0	0		0	0	
Operative Workers	2.5%	0	0	31.5%	0	0	45.0%	0	0	0.2%	0	0	45.0%	0	0	0	0		0	0	
Transportation	5.2%	0	0	39.7%	0	0	13.0%	0	0	0.8%	0	0	13.0%	0	0	0	0		0	0	
Laborers	2.3%	0	0	63.9%	0	0	8.7%	0	0	0.3%	0	0	8.7%	0	0	0	0		0	0	
TOTAL		4	0		9	0		3	3		0	0		7	1		30	7		12	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
9	6	3	38.1%
23	16	7	61.8%
18	18	0	22.2%
12	12	0	44.0%
2	2	0	46.3%
10	9	1	71.5%
2	2	0	59.6%
0	0	0	9.4%
0	0	0	43.9%
0	0	0	15.0%
0	0	0	13.0%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS**TOTAL**

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.18	0	N/A	0.86	0	N/A	1.76	2	N/A	0.02	0	N/A	1.76	1	N/A	3.43	3	N/A
Professional	0.71	0	N/A	2.37	0	(2.37)	4.62	1	(3.62)	0.09	0	N/A	4.62	2	(2.62)	14.21	7	(7.21)
A&E, Science, Computer	0.29	2	1.71	0.83	2	1.17	7.88	1	(6.88)	0.04	0	N/A	7.88	0	(7.88)	4.00	0	(4.00)
Technical	0.42	2	1.58	1.52	2	N/A	4.88	0	(4.88)	0.01	0	N/A	4.88	3	(1.88)	5.28	0	(5.28)
Sales	0.06	0	N/A	0.40	1	N/A	0.38	0	N/A	0.01	0	N/A	0.38	0	N/A	0.93	0	N/A
Administrative Support	0.37	0	N/A	2.40	4	1.60	1.89	2	N/A	0.04	0	N/A	1.89	2	N/A	7.15	1	(6.15)
Services	0.07	0	N/A	0.86	0	N/A	0.39	0	N/A	0.01	0	N/A	0.39	0	N/A	1.19	0	(1.19)
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

<div style="display: flex; justify-content: space-between;"> 000105 <div> REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO </div> </div>		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) <div style="text-align: right;">52 10/21</div>	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): ENGINEERING AND CAPITAL PROJECTS	
		3. DATE: April 18, 2008	
4. SUBJECT: NEXTG AGREEMENT FOR THE CONVERSION OF OVERHEAD FACILITIES TO UNDERGROUND			
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Marnell Gibson / Nathan Bruner MS 908A		6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.) 533-5213 / 533-7426	
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES			
FUND			
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT			
9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated cost of \$500,000 over life of agreement, currently estimated to be 52 years.			
10. ROUTING AND APPROVALS			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	5/1/08
2	EOCP	<i>[Signature]</i>	7/14/08
3	EAS	<i>[Signature]</i>	7/15/08
4	LIAISON	<i>[Signature]</i>	7/22/08
5	AUDITOR	<i>[Signature]</i>	8/19/08
6	FM	<i>[Signature]</i>	7/24/08
7			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
8	DEPUTY CHIEF	<i>[Signature]</i>	8/20/08
9	COO	<i>[Signature]</i>	
10	CITY ATTORNEY	<i>[Signature]</i>	9/22/08
11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/23/08
		DOCKET COORD: <i>[Signature]</i>	COUNCIL LIAISON: <i>[Signature]</i>
		COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
		<input type="checkbox"/> REFER TO: _____	COUNCIL DATE: 10/7/08
11. PREPARATION OF: <input type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)			
1. Authorizing the Mayor to execute an agreement with NextG for the relocation of overhead facilities to underground service, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and Agreement.			
11A. STAFF RECOMMENDATIONS: ADOPT THE RESOLUTION			
12. SPECIAL CONDITIONS:			
COUNCIL DISTRICT(S):		All	
COMMUNITY AREA(S):		Various Community Areas	
ENVIRONMENTAL IMPACT:		This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).	
HOUSING IMPACT:		None with this action	
OTHER ISSUES:			

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: April 18, 2008
ATTENTION: Council President and City Council
ORIGINATING DEPT: Engineering and Capital Projects
SUBJECT: NextG Agreement for the Conversion of Overhead
Facilities to Underground
COUNCIL DISTRICT(S): All
STAFF CONTACT: Nathan Bruner (619) 533-7426

REQUESTED ACTION:

Authorize the Mayor to execute an agreement with NEXTG for the relocation of overhead facilities to underground service, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this Agreement.

STAFF RECOMMENDATION:

Adopt Resolution

EXECUTIVE SUMMARY:

Beginning in 1967, the Public Utilities commission of the State of California (CPUC) instituted a statewide program to convert existing overhead lines to underground service (CPUC Program). The CPUC Program has been implemented through the CPUC's rulemaking process and conversion tariffs, including San Diego Gas and Electric's (SDG&E) Rule 20 and AT&T's Rule 32. Both Rule 20 and Rule 32 require underground conversion projects meet "public benefit" criteria.

In 1970, the City and SDG&E entered into a fifty (50) year franchise agreement, wherein SDG&E agreed to convert overhead lines to underground service per CPUC Rule 20 at a rate equal 4.5% of their gross electric revenues. From 1979 through 2001, the rate of underground conversion of overhead lines gradually declined as low as one percent (1%) of SDG&E's gross electric revenue.

To address this decline, the City and SDG&E revised the terms of the franchise agreement for the remaining 20 years of the franchise agreement, in order to restore the rate of underground conversion of SDG&E's overhead lines to 4.5% of SDG&E's gross electric revenue. The City and SDG&E agreed to pursue an electric surcharge on electricity users within the City of San Diego, enabling the City to expand the conversion of overhead lines in residential areas (Surcharge Program). In 2002, the city amended the Underground Utility Procedural Ordinance and adopted the new city Council Policy 600-08, which requires, among other things, all companies with overhead lines within the City of San Diego to underground lines that do not necessarily meet public benefit criteria under the conversion tariffs implementing the CPUC program. The CPUC approved the increases to the SDG&E electric franchise fee surcharges in CPUC Resolution E-3788 on December 19, 2002. In Resolution E-3788, the CPUC granted a deviation of the CPUC Rules governing utility undergrounding in order to implement the SDG&E/City proposed underground conversion program.

In May 2002, the City revised the terms of the Cox and Time Warner cable TV franchises in order to secure the cable companies participation in the Surcharge Program.

Generally, under those terms the City pays for the trenching and installation of conduit in the joint trench (conduit provided for by cable companies) and the cable companies will pay for the remainder of the undergrounding expenses. In addition, the cable companies agree to not pass those undergrounding costs on directly to their customers.

In January 2005, the City and AT&T reached a settlement agreement to secure AT&T's participation in the Surcharge Program. Under that settlement agreement, the terms are similar to that of the cable companies, except that AT&T – with the City's support – is currently in the process of seeking a surcharge on AT&T customers, both wholesale and retail, to provide the necessary funds.

With the City's support, NEXTG (a telecommunications company similar to AT&T) desires to participate in the Surcharge Program in a manner similar to that of the cable companies in that the City will pay for the trenching and installation of conduit in the joint trench (conduit provided for by NEXTG) and NEXTG will pay for the remainder of the undergrounding expenses. This agreement does not require CPUC approval, nor does it contemplate a cost recovery surcharge as presently being pursued by AT&T.

FISCAL CONSIDERATIONS:

Estimated Costs of \$500,000 over life of the Agreement, currently estimated to be 52 years.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

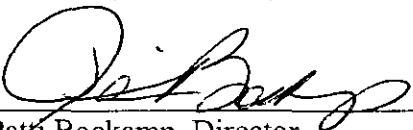
None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

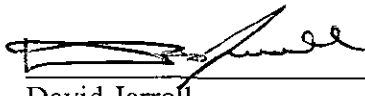
None explicitly for this Agreement

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

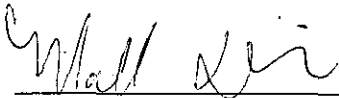
Residents, Businesses, and other Utility Companies



Patti Boekamp, Director
Engineering & Capital Projects



David Jarrell
Deputy Public Works Chief



Marnell Gibson
Deputy Director, Engineering & Capital Projects

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING AN AGREEMENT WITH NEXTG
NETWORKS, INC. FOR THE CONVERSION OF OVERHEAD
FACILITIES TO UNDERGROUND SERVICE

WHEREAS, The City of San Diego has implemented an Underground Conversion
Program for which NextG Networks, Inc. desires to participate.; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor be and he is hereby authorized and empowered to execute, for
and on behalf of said City, an agreement with NextG Networks, Inc., for an amount not to
exceed \$500,000 for the relocation of overhead facilities to underground services under the terms
and conditions set forth in the Agreement on file in the office of the City Clerk as Document No.
OO _____, together with any reasonably necessary modifications or amendments thereto
which do not increase project scope or cost and which the Mayor shall deem necessary from time
to time in order to carry out the purposes and intent of this project and agreement.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage,
a written or printed copy having been available to the City Council and the public a day prior to
its final passage.

Section 3. That this ordinance creates an obligation upon the City of San Diego extending
for a period greater than five years, and thus requires that the ordinance be adopted by the
Council by two-thirds majority vote of the members elected as required under San Diego City
Charter section ninety-nine.

000110

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

BE IT FURTHER RESOLVED, that this activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Ryan Kohut
Deputy City Attorney

RK:cfq
08/24/08
Or.Dept:E&CP
O-2009-25

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

AGREEMENT
FOR THE CONVERSION
OF OVERHEAD FACILITIES
TO UNDERGROUND SERVICE

This Agreement for the conversion of overhead facilities to underground service (the "Agreement") is made by and between the City of San Diego (the "City"), a municipal corporation, and NextG Networks, Inc. ("NextG"), a Delaware corporation, with offices located at 2216 O'Toole Ave., San Jose, CA 95131, alternatively referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. Beginning in 1967, the Public Utilities Commission of the State of California (the "CPUC") instituted a statewide program to convert existing overhead lines to underground service (the "CPUC Program"). The CPUC Program has been implemented through the CPUC's rulemaking process and conversion tariffs, which require underground conversion projects meet certain "public benefit" criteria.
- B. In 1970, the City and San Diego Gas & Electric Company ("SDG&E") entered into a fifty (50) year franchise agreement, wherein SDG&E agreed to convert overhead lines to underground service per CPUC Rule 20 at a rate equal to four and five-tenths percent (4.5%) of their gross electric revenues. From 1979 through 2001, the rate of underground conversion of overhead lines gradually declined from four and five-tenths percent (4.5%) to as low as one percent (1%) of SDG&E's gross electric revenue.
- C. To address this decline, the City and SDG&E revised the terms of the franchise agreement for the final twenty (20) years to restore the rate of underground conversion of SDG&E's overhead lines to four and five-tenths percent (4.5%) of SDG&E's gross electric revenue. In connection with the foregoing, the City and SDG&E agreed to pursue an electric surcharge on electricity users within the City of San Diego, enabling the City to expand the conversion of overhead lines to residential areas (the "Surcharge Program"). In 2002, the City amended the Underground Utility Procedural Ordinance and City Council Policy 600-08, which requires, among other things, all companies with overhead lines within the City of San Diego to underground lines that do not necessarily meet public benefit criteria under the conversion tariffs implementing the CPUC Program. The CPUC approved the increases to the SDG&E electric franchise surcharges and the City's Underground Conversion Program in Resolution E-3788 on December 19, 2002.
- D. Recognizing that the Surcharge Program creates additional costs for utility companies operating in the City of San Diego, the City has agreed to mitigate those costs by paying to install underground conduit for some utility companies in return for their full participation in the Surcharge Program. NextG desires to participate in the Surcharge Program under this arrangement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and NextG agree as follows:

AGREEMENT

1. Conduit Design. For each Surcharge Project that includes NextG facilities, NextG shall timely prepare written drawings, plans, specifications and other engineering designs for underground conduit and appurtenant facilities necessary to accommodate the conversion of NextG's existing overhead wires to underground service. NextG shall pay the cost of Conduit Design. The Conduit Design shall be completed and delivered to the City no later than the corresponding completion date set forth in the applicable schedule.

1.1 Conduit Design Standards. Each Conduit Design shall contain only the amount of conduit reasonably necessary to accommodate NextG's existing overhead facilities, utilizing the joint trench indicated in SDG&E's final design. If NextG believes additional conduit is necessary, the Parties shall meet to discuss whether space is available in the joint trench and apportionment of costs. Unless otherwise agreed, the City is not obligated to pay to install more than the amount of conduit reasonably necessary to accommodate NextG's existing overhead facilities.

1.2 Design Review. The City may, at its own expense, retain a consultant to review NextG's Conduit Designs. At the City's request, NextG agrees to provide any documents reasonably necessary to review the Conduit Designs prepared pursuant to this Agreement, and to allow the consultant to contact the designers at NextG for clarification, if necessary.

2. Conduit Materials. For each Surcharge Project, NextG shall purchase and deliver all conduit, associated components and all other materials described or otherwise required in the Conduit Design (including manhole and hand-hole materials). NextG shall pay the cost of purchase and delivery of Conduit Materials. The Conduit Materials shall be delivered to the applicable installation site no later than the corresponding delivery date set forth in the schedule.

3. Conduit Installation. Following the purchase and delivery of the Conduit Materials, the City shall install the Conduit Materials in accordance with the applicable Conduit Design. The City shall pay the cost of Conduit Installation, including NextG's portion of any trench costs within the boundaries of the Surcharge Project.

3.1 Inspection. NextG may observe and inspect the Conduit Installation, at its own expense, to confirm the work is done properly and in accordance with the applicable Conduit Design. If NextG discovers any discrepancies, NextG shall promptly notify the City, and the Parties shall meet to address the problem.

4. Overhead Line Conversion. Following the installation of the Conduit Materials, NextG shall convert of all its overhead facilities to underground service for each Surcharge Project. NextG shall pay the cost of Overhead Line Conversion, including the cost of removing its existing

overhead facilities. Overhead Line Conversion shall be completed no later than the corresponding conversion date set forth in the schedule.

4.1 Restriction Against Double Trenching. For any Surcharge Project for which Conduit Installation has been completed pursuant to this Agreement, NextG must use the installed conduit for Overhead Line Conversion. The foregoing limitation applies only to the conversion of existing overhead facilities, and is not a restriction on trenching for future additions or modifications to NextG's facilities.

4.2 Ownership of Conduit. Upon completion of Overhead Line Conversion for each Surcharge Project, all right, title and interest in and to the installed conduit and appurtenant facilities shall vest with NextG. Transfer of ownership is without cost to NextG or guarantee by the City. Any maintenance required after transfer is the responsibility of NextG.

5. Schedule. The City shall establish a schedule for each Surcharge Project subject to and in accordance with the criteria set forth in San Diego Municipal Code Section 61.0509. The City will consult with NextG, and act in good faith to reasonably balance the interests of NextG and all other parties affected by each Surcharge Project. Each schedule shall include, among other deadlines and scheduled dates, the date the Conduit Design must be completed, the date the Conduit Materials must be delivered to the work site, and the date Overhead Line Conversion must be finished.

5.1 Design Time. NextG shall be provided not less than eight (8) weeks from the date NextG receives the final design from SDG&E, to complete each Conduit Design for each Surcharge Project.

6. Effect on CPUC Program. This Agreement does not affect or pertain to the City's or NextG's obligations with regard to Underground Utility Districts created under the CPUC Program, alternatively known as SDG&E Rule 20 or SBC Rule 32 projects.

7. Notices. Any tender, delivery, notice, demand or other communication required or permitted under this Agreement shall be in writing, and shall be deemed delivered, given and received upon the earlier of: (a) if personally served, the date of delivery to the person to receive such notice; (b) if given by facsimile, when sent, provided a follow-up copy of the notice is sent by United States Mail, postage prepaid, as of the date of the transmission of the facsimile; (c) if mailed, either registered or certified with return receipt requested, four (4) business days after the date of posting by the United States Postal Service; or (d) if sent by Federal Express or other comparable overnight delivery service, upon delivery as documented by the service's delivery records. Notices shall be sent in accordance with the following, as may be updated from time to time by the Parties in writing:

If to City: City of San Diego
 Underground Utility Conversion Program
 600 B St, 8th floor, MS908A
 San Diego, California 92101
 Attn: Nathan Bruner, Underground Program Manager
 FAX: (619) 533-3071

If to NextG: NextG Networks, Inc.
 2216 O'Toole Ave
 San Jose, CA 95131
 Attn: Richard Bertalan, Network Operations Manager
 FAX: (408) 353-5397

8. Successors-in-interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors in interest.

9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Agreement.

9.1 Anticipated Project Funding. The City anticipates using funds generated from the SDG&E electric surcharge to pay for its obligations under this Agreement. If a court of competent jurisdiction or the CPUC issues an order, ruling, judgment or other determination holding the use such funds as provided by this Agreement is improper or illegal, the City may immediately terminate this Agreement as to Surcharge Projects where construction has not commenced, and all future projects. Surcharge Projects where construction has commenced shall be completed in accordance with this Agreement.

10. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed. Accordingly, the Parties agree to resolve all disputes arising in the administration of this Agreement in accordance with the following procedures:

10.1 Designated Representatives. Each Party shall designate a representative responsible for overseeing the day-to-day implementation of this Agreement as its "Dispute Coordinator" and a more senior representative as its "Review Manager." Each Party shall notify the other in writing of such designations and may change such designations from time to time by written notice to the other Party.

10.2 Notice. When a dispute arises, the Dispute Coordinator for the aggrieved party shall promptly provide the Dispute Coordinator for the other Party written notice of the disagreement or dispute.

10.3 Dispute Coordinators. If the Dispute Coordinators are unable to resolve the dispute within thirty (30) calendar days after such written notice, the Parties shall refer such dispute to their respective Review Managers.

10.4 Review Managers. The Review Managers shall meet within fifteen (15) calendar days of such referral. The Review Managers shall exercise best efforts to resolve the dispute and may use non-binding mediation to assist in the negotiations.

10.5 Confidentiality. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in any forum without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence.

10.6 Condition Precedent. Completion of the dispute resolution process set forth in this section is a condition precedent to either Party proceeding to litigation.

11. Assignment. Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which shall not be unreasonably withheld.

12. Waiver. No breach of any provision of this Agreement can be waived unless in writing and signed by the waiving Party. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

13. Force Majeure. In the event either Party shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this Agreement to be performed by the Party and such delay or hindrance is due to strikes, work-stoppages, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the Party so delayed or hindered, then performance of such work, service or other act shall be excused for the period of such delay and the period for the performance of such work, service or other act shall be extended for a period equivalent to the period of such delay.

14. Limitation on Powers. Nothing in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

15. Amendment. This Agreement may be amended or modified only by a written instrument executed by both Parties.

16. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Venue from actions arising out of the Agreement shall be in the County and City of San Diego, California.

17. No Presumption Against Preparer of Agreement. The Parties acknowledge and agree each of the Parties has contributed to the drafting of this Agreement, and no provision shall be construed against any Party as being the drafter. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

18. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements and/or representations of or between the Parties regarding the subject matter hereof.

19. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, this Agreement is executed by the City, acting by and through the City Manager or his designee pursuant to Resolution No. R-_____, authorizing such execution, and by NextG, acting by and through its lawfully authorized officer.

THE CITY OF SAN DIEGO
a municipal corporation

NextG, Inc.
a Delaware corporation

By _____

By Robert J. Delsman
Robert L. Delsman

Title _____

V.P., Government Relations and
Title Regulatory Affairs

Date _____

Date May 19, 2008

I HEREBY APPROVE the form and legality
of this Agreement this ____ day of
_____, 2008.

MICHAEL J. AGUIRRE, City Attorney

By _____
Deputy City Attorney



NextG Networks

July 3, 2008

Via FedEx

Nathan Bruner
City of San Diego
Utilities Undergrounding Program
600 B Street, 8th Floor, MS 908A
San Diego, CA 92101

Re: Work Force Report of NextG Networks of California, Inc. ("NextG")

Dear Nathan,

Enclosed you will find a resubmitted Work Force Report for NextG.

NextG Networks of California, Inc. is a wholly owned subsidiary of NextG Networks, Inc. NextG California does not have any employees, as all employees of the company are employed by the parent corporation. NextG is therefore submitting an amended Work Force Report, using the data of NextG Networks, Inc.

Thank you for your assistance with this matter. Should you have any questions or concerns, please call me at (408) 954-1580, x186.

Sincerely,

Anthony E. Rodriguez
Contracts Manager and Regulatory Affairs Specialist

000120



July 2, 2008

Via FedEx

Nathan Bruner
City of San Diego
Utilities Undergrounding Program
600 B Street, 8th Floor, MS 908A
San Diego, CA 92101

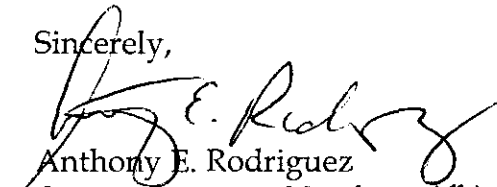
Re: Work Force Report of NextG Networks of California, Inc. ("NextG")

Dear Nathan,

Please find enclosed the Work Force Report of NextG Networks of California, Inc.

Thank you for your assistance with this matter. Should you have any questions or concerns, please call me at (408) 954-1580, x186.

Sincerely,


Anthony E. Rodriguez
Contracts Manager and Regulatory Affairs Specialist

2216 O'Toole Avenue, San Jose CA 95131
Telephone: (408) 954-1580 Fax: (408) 383-5397

000121



NextG Networks

May 20, 2008

Via FedEx

Nathan Bruner
City of San Diego
Utilities Undergrounding Program
600 B Street, 8th Floor, MS 908A
San Diego, CA 92101

Re: Agreement for the Conversion of Overhead Facilities to Underground
Services ("Agreement")

Dear Nathan,

Enclosed are six (6) copies of the executed Agreement, duly signed by Robert L. Delsman,
V.P. of Government Relations and Regulatory Affairs.

Thank you for your assistance with this matter. Should you have any questions or
concerns, please call me at (408) 954-1580, x186.

Sincerely,

Anthony E. Rodriguez
Contracts Manager and Regulatory Affairs Specialist

2216 O'Toole Avenue, San Jose CA 95131
Telephone: (408) 954-1580 Fax: (408) 383-5397